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EXAMINER	
HINES, R	
ART UNIT	
124	PAPER NUMBER
DATE MAILED: 11/15/87 9	

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on 9/25/85 This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892. 2. Notice re Patent Drawing, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449 4. Notice of Informal Patent Application, Form PTO-152
5. Information on How to Effect Drawing Changes, PTO-1474 6.

Part II SUMMARY OF ACTION

1. Claims 3-5, 9-13 and 15-22 are pending in the application.
Of the above, claims 9 and 19-22 are withdrawn from consideration.

2. Claims 1-2, 6-8 and 14 have been cancelled.

3. Claims _____ are allowed.

4. Claims 3-5, 10-13 and 15-18 are rejected.

5. Claims _____ are objected to.

6. Claims 9 and 15-22 are subject to restriction or election requirement.

7. This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.

8. Allowable subject matter having been indicated, formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. These drawings are acceptable; not acceptable (see explanation).

10. The proposed drawing correction and/or the proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been approved by the examiner. disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved. disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections **MUST** be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.

12. Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received
 been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

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Art Unit 124

Claims 9 and 19-22 withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a nonelected species. Election was made without traverse in Paper No. 15.

The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 3-5, 10-13 and 15-18 are rejected under 35 U.S.C. 103 as being unpatentable over Hamberger et al. of record, especially in view of Martin et al., and Berney, both above cited. The patent does set forth compounds of the instantly recited structure wherein the compound may contain the exact same groupings identified as R₁, R₂, R₃, R₄, R₅ and R₆ as well as the fact that the entire class of compounds are useful in the form of their pharmaceutical compositions, and moreover, that the compounds are useful for the same method of use, per

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Art Unit 124

se. Applicant's arguments and declaration submitted under 37 CFR 1.132 have been considered but are not deemed persuasive of patentable merit, i.e. the class of compounds suggested by Hamberger are useful for the exact same properties and the differences in activity is not deemed significant, especially since the instant claims are also embraced by the claims of the prior art reference, and moreover, the ancillary art further sets forth that the alkenyl and alkynyl groups are interchangeable one for the other, ie.. the activity would not obviously be expected to be the same.

Moreover, the showing is not determinative of significance, especially since the artisan would expect that the interchange of the -CH=CH- moiety for the corresponding-C=c- moiety would lead to compounds the same properties, i.e. not the same activity but pharmacological properties ~~as~~ ^{wth} antimycotic agent. Further, the mere fact that the specification of Hamberger does not set forth exemplification of alkyl^{my} in the same position is not material in view of the interchange suggested by the art of record. No invention is apparent over the teachings of the prior art which is, in fact, suggestive of the claimed class of compounds and that they would be expected to be useful for the same properties, per se.

RHines/kl

703/557-3920

1-10-87


ROBERT V. HINES
PRIMARY PATENT EXAMINER
GROUP ART UNIT 124